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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

ANDRUW CRITTENDEN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiff ANDRUW CRITTENDEN (the “Plaintiff”), on behalf of himself and all others similarly situated (the “Class”), brings this Class Action Complaint (the “Action”) against Defendant APPLE, INC. (“Apple” or the “Defendant”) for violations of federal and state law. The allegations herein are made based on Plaintiff’s personal knowledge as to the allegations pertaining to himself, and upon information and belief as to all other matters.

INTRODUCTION

1 1. Apple sells \$47.9 billion worth of their smartphone device, the ubiquitous
2 “iPhone,” on an annual basis.¹ Apple sells nearly \$1 billion worth of devices and services on a
3 daily basis, and the main driver of Apple’s success is the iPhone.

4 2. Apple releases new iPhones at least annually, which are generally more expensive
5 than the last model that they sold with the addition of new features. Apple also adds new features
6 to existing models of iPhones through their release and integration of new software updates to the
7 Apple operating system (“iOS”) on which all Apple devices, including Apple’s iPhone, function.
8 These software updates also typically patch problems with the iPhone including security issues
9 and vulnerabilities that may allow improper access to a user’s iPhone, or may allow access to
10 information on, or through, the iPhone that should not be accessed without permission.

11 3. This case is about knowing and intentional damage inflicted by Apple through
12 software updates, including (but not limited to) to iPhone models 11, iPhone 12, iPhone 12 Pro,
13 and iPhone 12 Pro Max. The updates at issue are iOS 14.5, 14.5.1, and 14.6 (the “Updates”).
14 Unfortunately for Plaintiff and members of the Class the Updates have significantly damaged their
15 iPhones, causing their processing speeds to decrease dramatically, and their battery to drain faster.
16 Plaintiff and members of the Class never authorized such access and damage to their iPhones.

17 4. After hundreds of online complaints on forums, articles on technology blogs and
18 on traditional media websites, and hundreds of complaints on social media, Apple has failed to
19 acknowledge improperly damaging user’s iPhones without disclosure, which is illegal and
20 actionable pursuant to the state and federal laws pled herein. Plaintiff alleges violations on behalf
21 of himself and the Class pursuant to Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*;

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28 ¹ <https://www.nytimes.com/2021/04/28/business/apple-profit-earnings-iphone.html>, (last
accessed May 31, 2021).

1 California Computer Access and Fraud Act, Cal. Penal Code § 502, *et seq.*, California's Unfair
2 Competition Law Bus. & Prof. Code, § 17200 *et seq.*, and trespass to chattels.

3 **JURISDICTION AND VENUE**

4 5. This Court has federal question subject-matter jurisdiction pursuant to 28 U.S.C. §
5 1331, because Plaintiff alleges that Apple violated the Computer Fraud and Abuse Act, 18 U.S.C.
6 § 1030, *et seq.*

7 6. This Court also has supplemental jurisdiction over the state law claims pursuant to
8 28 U.S.C. § 1367(a) because all claims alleged herein from part of the same case or controversy.

9 7. Venue is proper in this District under 28 U.S.C. § 1391(a) through (d) because
10 Apple's principal place of business is located in this District and substantial parts of the events or
11 omissions giving rise to the claims occurred in the District. Venue is also proper in this Court
12 because Apple is located here, the causes of action arose here, and as Apple has admitted, the
13 Devices at issue herein have always been designed, manufactured, and tested by Apple in this
14 District. Additionally, Apple's Terms of Service contains a choice of law provision that selects
15 this District.
16

17 **INTRADISTRICT ASSIGNMENT**

18 8. This action is properly assigned to the San Jose Division of this District pursuant
19 to N.D. Cal. L.R. 3-2, because Apple's principal place of business is in Santa Clara County, which
20 is served by the San Jose Division. Moreover, Apple conducts substantial business in San Jose
21 County, which is served by this Division.
22

23 **PARTIES**

24 9. Plaintiff Andruw Crittenden, a citizen of Turlock, California, is an Apple iPhone
25 user who owns an Apple iPhone 11 Pro Max. Plaintiff's iPhone was damaged as a result of the
26 conduct by Apple alleged herein in the form of reduced processing speeds and reduced battery
27 performance. Plaintiff's iPhone is promptly updated with the latest iOS Updates as soon as these
28

1 become publicly available. Plaintiff's iPhone has been updated with each of the Updates relevant
2 to this Action.

3 10. Defendant Apple Inc., is a California-based technology company, headquartered in
4 this District at 1 Infinite Loop, Cupertino, California 95014. Defendant sells iPhones, amongst
5 other computing devices.

6 **FACTUAL ALLEGATIONS**

7 **I. APPLE'S iOS AND iOS UPDATES GENERALLY**

8 11. On January 9, 2007, Apple entered the smartphone market with the introduction of
9 its now-iconic and ubiquitous iPhone. Possessing many of the capabilities of an internet-connected
10 laptop computer and a camera in a sleek, compact device, the iPhone became one of the most
11 popular consumer devices of all time.

12 12. Apple introduces new versions of its iPhones annually in the fall to much media
13 fanfare. The current-generation iPhone model is the iPhone 12. The least expensive version of the
14 iPhone 12 is the iPhone 12 Mini which starts at \$699, and the most expensive is the iPhone 12 Pro
15 Max, which starts at \$999.

16 13. iPhones operate using Apple's proprietary iOS software system. iOS is the mobile
17 operating system that runs on Apple's mobile devices, including the Devices. iOS is the main
18 software that allows users to interact with their Devices. iOS comes pre-installed on iPhones, and
19 the software is updated periodically to correct software bugs, patch security vulnerabilities, and
20 introduce new features.

21 14. Apple informs iPhone owners of new updates primarily through two ways. First,
22 on becoming generally available for download, Apple will display a notification above the settings
23 icon which is present on each iPhone, an example is below:
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15. Second, if the update is not installed, users will receive pop-up notifications on their devices which require users to download and install the update immediately, or click a “later” button, which will, in turn, spawn more popup notifications.

16. To manually implement the new update, the iPhone user must click a “install now” button.

17. Apple strongly encourages iPhone users to download updates. For example, on their website, Apple states that updates are critical to maintain the security of Apple’s iPhones. Apple states, “Keeping your software up-to-date is one of the most important things you can do to maintain your Apple product’s security.”²

² <https://support.apple.com/en-us/HT201222>, (last accessed June 1, 2021).

18. Apple iPhone users can also choose to automatically update their devices by selecting an automatic update option in their iPhone's settings, in which case Apple will install the updates promptly after it makes them available.

19. iOS updates include an array of features which are bundled – a user cannot download the security portion of the iOS update while ignoring the other features: it is all-or-none.

II. APPLE'S iOS 14.5 UPDATE

20. The first update relevant to this action is iOS 14.5, which contained an array of new features for the iPhone. The iOS 14.5 update is/was available for download by iPhone devices 6s and later.

21. This update was released on April 26, 2021.³

22. The changes included in iOS 14.5 were described in summary form on the description to the notice.⁴ Clicking on the link in the summary notice takes consumers to an Apple webpage that contains the full "Release Notes" of the update, which included the following changes, among others: (1) mask support for Face ID – meaning, iPhones gain the capability of being unlocked through another one of Apple's devices, the Apple Watch, since the utility of masks during the 2019 Coronavirus pandemic ("COVID-19") renders the Face ID facial detection unlocking system useless, (2) the long anticipated App Transparency Tool ("ATT") which "requires apps to get permission before sharing your activity and data with websites and apps owned by other companies," (3) support for new tracking devices called "AirTags" which allow users to find their tracked items more easily through an integrated Apple application called "FindMy," (4) an array of new emojis for users to use while texting and sending text-based messages, and (5) a recalibration of iPhone battery utility, amongst other new tools.

³ <https://www.apple.com/newsroom/2021/04/ios-14-5-offers-unlock-iphone-with-apple-watch-diverse-siri-voices-and-more/>, (last accessed June 4, 2021).

⁴ *Id.*

1 23. The Release Notes also contained a notice and link detailing the security updates
2 included with iOS 14.5, which stated “*For information on the security content of Apple software*
3 *updates, please visit this website: <https://support.apple.com/kb/HT201222>.*” Clicking the security
4 content link opened another webpage containing a detailed description of all the security changes
5 included.

6 24. Notably, Apple pulled the 14.5 iOS update from being “signed” for devices
7 anymore – this means that the update is no longer downloadable; this is uncommon for Apple,
8 which normally only stops “signing” updates when they are older “to encourage customers” to
9 download new updates “to keep their operating systems up to date.”⁵

11 **III. APPLE’S iOS 14.5.1 UPDATE**

12 25. This update was released on May 3, 2021.

13 26. According to Apple, iOS 14.5.1 provided bug fixes and “important security
14 updates”:

15 This update fixes an issue with App Tracking Transparency where some users who
16 previously disabled Allow Apps to Request to Track in Settings may not receive
17 prompts from apps after re-enabling it. This update also provides important security
updates and is recommended for all users.⁶

18 27. As alleged below, iOS 14.5.1 would dramatically slow down the phones, and cause
19 battery to drain faster. Apple did not disclose this important information at any time prior to
20 installing it on their devices.
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27 ⁵ <https://www.macrumors.com/2021/05/10/apple-stops-signing-ios-14-5/>, (last accessed June 3,
28 2021).

⁶ *Id.*

IV. iOS 14.5.1 DAMAGED IPHONES BY DRAMATICALLY SLOWING PROCESSING SPEED, AND BATTERY LIFE

28. On May 5, 2021, the “MACRUMORS” Forums website gained a new page – “BEWARE! iOS 14.5.1 is Throttling!”⁷ The first post on the new page stated:

Updated from iOS 14.5 yesterday to iOS 14.5.1 on my iPhone 11. After the update finished, I was playing CODM and noticed the frame rates were horrible. I checked my settings to make that it was set to the max frame rate, which it was. I then ran a geekbench⁸ test, and the scores I got were horrible for the multi-core. I then rebooted my phone to no avail; it was still super slow in games and in opening apps. I then proceeded to do a clean install which seems to have fixed the issue. Now my geekbench score is normal, and performance is what it used to be. What is going on, Apple? Anyone else having this issue? Upload a screenshot of your geekbench score on iOS 14.5.1 and tell us what device you have.⁹

MacRumors is a website dedicated to promptly reporting on Apple products and other developments, often breaking stories ahead of general media outlets. It is an independent website not affiliated with Apple.

29. The page grew exponentially over the next few weeks – at which time it had nearly 500 posts from users complaining about the degraded performance of their iPhones after installing iOS 14.5.1.¹⁰

30. A sample of complaints by Apple users from that page:

- Well my iPhone 11 is throttling like hell, it feels like I’ve been using iPhone 7 since this update. Apple please fix this.
- The multi score performance has dropped to less than half, this really sucks [] can someone tell me how to downgrade to 14.5?
- My 11 Pro is slower and GB5 score is way low
- There is a visible lag. No longer snappy.

⁷ <https://forums.macrumors.com/threads/beware-ios-14-5-1-is-throttling.2294990/>, (last accessed May 31, 2021)(hereinafter “MacRumors Forum”).

⁸ “geekbench” is a popular app which allows users to ‘benchmark’ the speed of their devices, including iPhones. Benchmarking is a tool used to ascertain the processing speed of a device and allows the user to measure the assessment against other devices in order to compare those processing speeds.

⁹ *Id.*

¹⁰ *Id.*, at 20.

- I rebooted my phone a couple days after the 14.5.1 update and ran GB5 yesterday (a day after reboot) with horrible scores. I actually rebooted in the first place *because* my phone felt sluggish. Regardless, the fact that we sometimes get halved performance depending on if we get lucky or not (or some other factors) means that something is wrong with the update.
- No go for me. Still as bad after a hard reset on my 12PM.
- I updated before I saw this thread. My 11 is noticeably slower. I restarted and none of my widgets would display information. Edit: it takes a good 2 to 3 mins for my widgets to "come online" for information. What the frig apple? I thought you were supposed to be the company of stability.
- Yup my iPhone 12PM is completely throttled with this update. Single core is fine but multi core scores on GB 5 are nearly half of what they should be.
- So, it wasn't just me that felt something had gone horribly wrong after updating.
- iPhone 12 Pro here. Glad to have found this thread. My phone is totally stuttering in any game, even simple stuff like Badland Brawl. It also won't send videos on Telegram as it obviously cannot encode them without the processing power.
- So I updated 30 minutes ago to 14.5.1 and... it does throttle too haha
- I don't have any experience with geek bench scores. But since 14.5.1 my phone is very slow to use. Animations stutter, apps are slow to open and close. If I am on FaceTime I can't do anything else on my phone. FaceTime will crash or the phone will just completely freeze up. Definitely something was changed in this last incremental update. I hope it's fixed in the next released update!
- Yikes! I just ran Geekbench after seeing this thread. I'm on a 12 Pro, and my last test in mid April was 1608/4182. The test I just ran was 1289/2515. What the hell is going on here?¹¹

31. One May 6, 2021, articles were published on other technology websites about potential throttling (downgrading of performance) by Apple's latest update. As reported below, popular online technology reviewers performed processor speed tests which confirmed the downgrading of processing speed that Plaintiff and other Class members experienced on "iPHONEHACKS":

A number of iPhone owners are reporting performance issues after updating their device to iOS 14.5.1. Post the update, their iPhones seem to be throttling for unknown reasons, leading to lower than usual benchmark scores and slower performance in CPU intensive apps...

A video by YouTuber Nick Ackerman clearly highlights the issue. In a speed test between the iPhone XR, iPhone 11, and iPhone 12, the iPhone 11's A13 Bionic chip was slower than the iPhone XR in video rendering, app loading, and benchmarks. While the iPhone 12's single-core performance was okay, its multi-core score was lower than that of the iPhone XR. The lower benchmark

¹¹ *Id.*

1 **scores were not a one-off issue as repeated benchmarks resulted in similar**
 2 **scores.**

3 ...
 4 In the 3DMark benchmark, the iPhone 12 and iPhone 11 both performed worse than
 5 the iPhone XR. It is important to note that none of the affected iPhones were warm
 6 indicating that their performance was not being throttled due to overheating issues.
 7 While the video highlights the issue with the iPhone 11 and iPhone 12, the problem
 8 also seems to persist with older and newer iPhones like the iPhone 7 and iPhone 12
 9 Pro, etc.

10 The iPhone XR was introduced in October 2018, while the iPhone 11 and iPhone
 11 12 were introduced in September 2019, and October, 2020, respectively. The XR
 12 model contained older chips than either the iPhone 11 and iPhone 12, and for that
 13 reason among others traded at a discount to those newer models, which until this
 14 update had much faster operating speeds. Currently the iPhone XR, 11, and 12 are
 15 available for purchase from Apple starting at \$499.¹²

16 32. On “WCCFTECH”:

17 If you are a proud owner of the iPhone 11 or iPhone 12 series and have updated to
 18 the latest iOS 14.5.1, you could possibly be experiencing performance throttling.
 19 Numerous iPhone owners are reporting performance issues after updating to
 20 Apple's latest software update. The performance throttling seems to be persistent
 21 due to unknown reasons and tests show lower than usual benchmark scores.

22 ...
 23 YouTuber Nick Ackerman shared a video in which he highlights the performance
 24 issue on iPhones. The speed test was conducted using the iPhone XR, iPhone 11,
 25 and iPhone 12. Surprisingly, the iPhone XR showed better performance compared
 26 to the iPhone 11's A13 Bionic chip. Moreover, the video rendering was faster on
 27 the iPhone XR compared to the iPhone 11. Not just this, the iPhone XR was faster
 28 in terms of app load time and better benchmarks as well. The performance issue
 seems to exist on Apple's iPhone 11 and iPhone 12 models running iOS 14.5.1.

Apart from the iPhone 11 performance, iPhone 12 faced a similar fate in terms of
 benchmark scores. While the single-core score is acceptable, the multi-score
 performance is lower than that of the iPhone XR. The benchmarks were recorded
 repeatedly and it only comes to show that iOS 14.5.1 adheres to performance
 throttling.

In addition, iPhone XR performs better than both, the iPhone 12 as well as the
 iPhone 11 in the 3DMark benchmarks. Take note that the performance throttling is
 not due to heating issues as the devices were not warm or hot in the test. The iPhone

¹² <https://www.iphonehacks.com/2021/05/ios-14-5-1-throttling-performance-iphone-11-12.html>,
 (last accessed May 31, 2021). Emphasis added.

11 and iPhone 12 are not the only models to have faced the issue, but it is also evident on older iPhone models.¹³

33. On FORBES:

First spotted by popular YouTuber Nick Ackerman, Apple iOS 14.5.1 has slashed the performance of iPhone 12 and iPhone 11 models by as much as 60%. To put this in perspective, iPhone 12 models are now performing like a 2018 iPhone XR, while iPhone 11 models are in line with a 2016 iPhone 7.

Here are the numbers put into perspective on Geekbench:

- iPhone 12 range (iOS 14.5) - single core: 1583, multi-core: 3967
 - **iPhone 12 range (iOS 14.5.1) - single core: 1478, multi-core: 2339**
 - iPhone 11 range (iOS 14.5) - single core: 1318, multi-core: 3019
 - **iPhone 11 range (iOS 14.5.1) - single core: 794, multi-core: 1271**
 - iPhone XR (iOS 14.5.1) - single core: 1105, multi-core: 2085
 - iPhone 7 (iOS 14.5.1) - single core: 728, multi-core: 1291
- “This is the strangest thing I’ve ever seen,” exclaims Ackerman. “We’re definitely getting some throttling” he adds[.]¹⁴

34. Apple did not disclose that the functioning of iPhones would be downgraded dramatically either in the Release Notes or anywhere else, and no iPhone owner consented to have their devices damaged in such a way.

V. APPLE’S iOS 14.6 UPDATE

35. This update was released on May 24, three weeks after iOS 14.5.1 was released, in part to fix the aforementioned issues. Apple does not typically issue updates weekly unless it is to address serious issues with a prior update or an emergent security issue.

36. The iOS 14.6 update added features such as subscription support for channels and individual shows, users gaining the ability to use voice control to unlock their iPhones after a restart, and a “fix” for issues specific to iPhones having reduced performance during start up.¹⁵

¹³ <https://wccftech.com/iphone-xr-beats-iphone-12-and-iphone-11-in-speed-test-performance-throttled-after-ios-14-5-1-update/>, (last accessed May 31, 2021).

¹⁴ <https://www.forbes.com/sites/gordonkelly/2021/05/08/apple-ios-iphone-12-pro-max-iphone-11-pro-max-serious-upgrade-problem/?sh=2dcfef3f2683>, (last accessed May 31, 2021).

¹⁵ <https://support.apple.com/en-us/HT211808#1451>, (last accessed May 31, 2021).

1 37. So, while Apple admitted that devices with iOS software prior to 14.6 had “reduced
2 performance,” it only admitted that said reduction in performance was “during start up” and it did
3 not admit to the performance issues – even though benchmark testing by consumers showed as
4 much.

5 38. While some users would report that their processing speed issues were resolved by
6 iOS 14.6, many users did not.¹⁶ And, what is worse, while iOS 14.6 may have resolved the
7 processing speed issue for some, it damaged the devices by causing battery to drain faster,
8 materially impacting the functioning and utility of the device. Plaintiff has experienced worse
9 battery drain after iOS update 14.6.
10

11 39. On “WCCFTECH,” an additional follow up article was published after the release
12 of iOS 14.6, highlighting excessive battery drain:

13 We previously heard that iOS 14.6 is causing excessive battery drain and heating
14 issues on all iPhone models. Furthermore, iOS 14.5.1 was also causing
15 performance throttling on iPhones and it remains to be seen if the iOS 14.6 update
16 has fixed the issue. There was also news that iOS 14.5.1 performance so bad on
17 new iPhone models that the iPhone XR performed better than iPhone 11 and iPhone
12.

18 The iOS 14.6 speed test comparison video is shared by the YouTube
19 channel iAppleBytes which shows that iPhone models now perform better on iOS
20 14.6. While the performance is not as good as iOS builds before iOS 14.5.1, it is
21 still a welcome addition. Nonetheless, the battery life on all iPhone models has
22 suffered from the latest release. Some users also report that the battery health of
23 their iPhones is also compromised.¹⁷
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27 ¹⁶ See gen., *MacRumors Forums*.

28 ¹⁷ <https://wccfttech.com/video-shows-ios-14-6-stacked-up-against-ios-14-5-1-in-speed-test-comparison/>, (last accessed May 31, 2021).

40. Numerous media outlets, including tech and non-tech outlets, reported that iOS 14.5.1 and 14.6 were leading to a dramatic strain on battery life.^{18 19 20}

41. Consumers also vocalized their concerns about battery life degradation and overheating – a sign that the battery is being overworked. A sampling of those concerns on MacRumors can be found below:

- I've noticed my iPhone 12 Pro Max is getting extremely hot around the volume and camera when watching videos for just a few minutes. Wasn't having that issue prior to update.
- Why does all of my iPhone start getting hot after being 2 years old? When they are new they never get hot doing basic tasks and then 1.5-2 years old they start getting hot and the battery life sucks. I've had this on a 5, 6S and now a Xs. Sounds like a software update to sell more phones.
- Battery life hasn't been any good on 14.5 and 14.5.1, WTF is going on at apple these days, are they turning into the next Samsung. 🙄 Getting 2 hours less battery life on my 12 pro max.
- The one consistent thing seems to be related to battery percentage. If my phone is almost fully charged, my benchmark scores are normal. Once the battery is below 90% they also start dropping. This seems to be pretty consistent. When the battery drops below 80% I start seeing test scores that are almost half of average. For the record, my battery's health is at 100% and Low Power Mode is not on.

42. Apple designs every aspect of the iPhone's operating system, including each and every element of every update. Moreover, it tests each iOS update on actual iPhones prior to release. Apple knew and intended iOS 14.5.1 and 14.6 (as well as the other updates encapsulated herein, as well as any subsequent update which have the same effect) to have the impact that it did.

VI. Apple Benefits from The Violations Alleged Herein

43. Although the claims alleged herein do not require an element of motive, Apple benefits from not having to tell existing and prospective iPhone users that updates touted to add

¹⁸ https://appleinsider.com/articles/21/06/01/some-iphone-users-report-high-battery-drain-following-ios-146-update/amp/?_twitter_impression=true, (last accessed June 3, 2021).

¹⁹ <https://9to5mac.com/2021/06/01/iphone-users-report-excess-battery-drain-ios-14-6/>, (last accessed June 3, 2021).

²⁰ <https://www.dailymail.co.uk/sciencetech/article-9651717/iPhone-users-say-horrific-iOS-14-6-draining-battery.html>, (last accessed June 4, 2021).

desirable features and to fix security and other bugs have a significant countervailing downside in the form of decreased processing speed and battery life. Apple has long positioned iPhones and iOS as a safer, more secure, and more privacy-oriented, alternative to the only other major smartphone operating system, Android, which is developed by Google and implemented by other device makers such as Samsung in their smartphones. Telling iPhone customers the truth -- that an update will significantly degrade the operation of the Devices -- is not something Apple is happy to make explicit. Without telling consumers the truth, iPhone users are far more likely to assume that the degradation is simply a natural consequence of the aging of the phones and of the battery.

44. Moreover, degrading device performance ahead of product launches may also allow Apple to drum up demand for faster phones with longer battery life. New iPhone models are typically launched every fall.

CLASS ACTION ALLEGATIONS

45. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), as applicable, and (c)(4), Plaintiff seeks certification of the following class (hereinafter, the “Class”):

All purchasers, owners, users, or lessees of the iPhone devices from iPhone 8 through present (the “Devices”) who experienced reduced functionality on their iPhone in the form of reduced battery life, reduced functionality, and/or processing speed caused by iOS 14.5, and/or iOS 14.5.1 and/or iOS 14.6.

46. Excluded from the Class are Apple, its subsidiaries, affiliates, officers, directors, and employees.

47. **Numerosity: Federal Rule of Civil Procedure 23(a)(1).** The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. Plaintiff is informed and believes—based upon the publicly-available information discussed herein—that there are millions of Class members, making joinder impracticable. Those individuals’ identities are available through Apple’s records, and Class

members may be notified of the pendency of this action by recognized, Court-approved notice dissemination methods.

48. **Commonality and Predominance: Federal Rules of Civil Procedure 23(a)(2) and 23(b)(3).** Apple has acted with respect to Plaintiff and the other members of the proposed Class in a manner generally applicable to each of them. There is a well-defined community of interest in the questions of law and fact involved, which affect all Class members. The questions of law and fact common to the Class predominate over the questions that may affect individual Class members, including the following:

- a. Whether Apple's iOS 14.5, iOS 14.5.1, iOS 14.6 damaged the performance of those Devices;
- b. Whether, if the Updates did damage the phones, Apple did this knowingly;
- c. Whether and to what extent Apple disclosed the effect of iOS Updates to Device performance;
- d. Whether Apple's conduct has violated the Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§ 17200, et seq.,
- e. Whether Apple's conduct has violated the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, et seq.;
- f. Whether Apple's conduct has violated Cal. Penal Code § 502.;
- g. Whether compensatory or consequential damages should be awarded to Plaintiff and the other Class members;
- h. Whether restitution should be awarded to Plaintiff and the other Class members; and
- i. Whether injunctive and/or other equitable relief is appropriate, and what that relief should be.

1 49. **Typicality: Federal Rule of Civil Procedure 23(a)(3).** Plaintiff's claims are
2 typical of other Class members' claims because Plaintiff and class members were subjected to the
3 same allegedly unlawful conduct and damaged in the same way.

4 50. **Adequacy of Representation: Federal Rule of Civil Procedure 23(a)(4).**
5 Plaintiff is an adequate class representative because their interests do not conflict with the interests
6 of Class members who they seek to represent, Plaintiff has retained counsel competent and
7 experienced in complex class action litigation, and Plaintiff intends to prosecute this action
8 vigorously. The Class members' interests will be fairly and adequately protected by Plaintiff and
9 their counsel.
10

11 51. **Declaratory and Injunctive Relief: Federal Rule of Civil Procedure 23(b)(2).**
12 The prosecution of separate actions by individual class members would create a risk of inconsistent
13 or varying adjudications with respect to individual Class members that would establish
14 incompatible standards of conduct for Apple. Such individual actions would create a risk of
15 adjudications that would be dispositive of the interests of other class members and impair their
16 interests. Apple has acted and/or refused to act on grounds generally applicable to the Class,
17 making final injunctive relief or corresponding declaratory relief appropriate.
18

19 52. Injunctive relief is particularly necessary in this case because Plaintiff and other
20 Class members continue to own their Devices and Apple will continue to offer updates, as it has
21 done regularly since the introduction of the first iPhone. These updates contain important security
22 fixes, and owners of the Devices should be able to plug security holes in the Devices without also
23 damaging the processing speed and/or battery health of the Devices. In addition to security fixes,
24 iOS updates typically include attractive new features. Apple should be enjoined from continuing
25 the *status quo*, which currently is to convince iPhone users to update their devices by disclosing
26 only the benefits of the updates. At the very least iPhone users should be told whether an update
27 will impact processing speed and battery life so that they can make an informed decision.
28

53. **Superiority: Federal Rule of Civil Procedure 23(b)(3).** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Apple, so it would be impracticable for class members to individually seek redress for Apple's wrongful conduct. Even if Class members could afford litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

CAUSES OF ACTION

COUNT I

VIOLATIONS OF THE COMPUTER FRAUD AND ABUSE ACT 18 U.S.C. § 1030, *et seq.*

54. Plaintiff realleges and incorporates by reference each of the above paragraphs as if fully set forth herein.

55. Apple caused Plaintiff and class members to download and install iOS Updates to their Devices without informing them that the iOS Updates contained code that would diminish Device performance. Accordingly, Plaintiff and class members did not give permission for Apple to damage the Updates their Devices—nor could they—as Apple omitted material information to Plaintiff and class members regarding the Updates.

56. Plaintiff and class members' Devices are protected computers as defined in 18 U.S.C. § 1030(e)(2)(B) because they are used in interstate commerce and/or are communication devices. Apple violated 18 U.S.C. § 1030(a)(5)(A) because it knowingly caused the transmission of a program, information, code, or command by sending iOS updates, and, as a result of Apple's

1 knowing transmission, Apple intentionally caused damage without authorization to Plaintiffs'
2 Devices. As alleged above, Plaintiff and Class members did not know that the Updates would
3 damage their phones and therefore did not authorize such damage.

4 57. Apple's conduct has caused Plaintiff and class members in economic damages. An
5 iPhone whose processing speed and battery life has been degraded is worth less than prior to the
6 degradation. Indeed, the iPhones 11 and 12s cost hundreds of dollars more than the iPhone XR, in
7 large part because of the much faster operating speed advantage the 11s and 12s had when new.
8 These advantages disappeared because of the Updates.
9

10 58. Class members, including Plaintiff, have additionally suffered the impaired use of
11 their devices; immediately after installing the Updates their Devices became slower and enjoyed
12 less battery life, and should be compensated for such reduction in function.

13 59. Moreover, there is a healthy and active market for used iPhones, and many retailers,
14 including Apple itself, allows iPhone owners to trade in their devices for a reduction in price of a
15 new device. Plaintiff and class members have additionally suffered loss by reason of these
16 violations.
17

18 60. Unless Apple is restrained and enjoined, Apple will continue to commit such acts.
19 As alleged above, iPhone updates contain important security reasons and, for that reason, iPhone
20 users must be protected from future damage to their Devices by impending updates they may wish
21 to implement to keep their devices secure. Money damages alone are inadequate, entitling Plaintiff
22 to remedies including injunctive relief as provided by § 1030(g).
23

24 61. Plaintiff and the Class seek all monetary and non-monetary relief allowed by law,
25 including damages and punitive damages, an order enjoining the acts and practices described
26 above, attorneys' fees, and costs under the Consumer Fraud and Abuse Act.
27
28

COUNT III

**VIOLATIONS OF THE CALIFORNIA COMPUTER DATA ACCESS AND FRAUD ACT
Cal. Penal Code § 502, *et seq.***

62. Plaintiff realleges and incorporates by reference each of the above paragraphs as if fully set forth herein.

63. In pushing Updates to its iOS to unsuspecting users of its Devices, Apple violated the California Penal Code, Computer Data Access and Fraud Act, Cal. Penal Code § 502, *et seq.* (“CDAFA”).

64. In relevant part, Apple violated § 502(c)(4) and (5).

65. As to § 502(c)(4), Apple knowingly accessed a computer system (the Devices) by providing and installing the iOS updates, which damaged the Devices. Apple did not inform Plaintiff or the class members that installation of the iOS updates would degrade the performance of their iPhones' processors and battery life, and, therefore, Plaintiff and other class members did not consent to the damage.

66. As to § 502(c), Apple knowingly and without consent disrupted computer services by installing code (the software updates) caused by the iOS updates to their iPhones which, as alleged above, degraded the processing power of the Devices and degraded the battery life of the Devices. “Computer services” is defined by Cal. Penal Code § 502(b)(4) as “computer time, data processing, or storage functions, Internet services, electronic mail services, electronic message services, or other uses of a computer, computer system, or computer network.” The Devices are and/or provide computer services within the meaning of the statute.

67. Because Device owners did not know that the updates contained code that would degrade their Devices, they did not give Apple permission to access and/or disrupt their Devices. As a result of Apple’s unlawful conduct, Plaintiffs and class members were damaged in an amount to be determined at trial.

68. Plaintiff and the Class seek all monetary and non-monetary relief allowed by law, including damages, an order enjoining the acts and practices described above, attorneys' fees, and costs under the CDAFA.

COUNT III TRESPASS TO CHATTELS

69. Plaintiff realleges and incorporates by reference each of the above paragraphs as if fully set forth herein.

70. California common law prohibits the intentional intermeddling with personal property in the possession of another, without consent, that results in either a) the deprivation of the use of that personal property; or b) the impairment of the condition, quality, or usefulness of the property.

71. Apple impaired the condition, quality, and usefulness of Plaintiff and class members' Devices, or parts of them, without their knowledge or consent. Such acts constituted an intentional interference with the use and enjoyment of the Devices.

72. Apple acted intentionally, because it knew that Plaintiff and class members were downloading computer software onto their Devices that reduced the performance of the Devices. Plaintiff and other class members only consented to the installation of iOS Updates that would improve performance, not diminish performance.

73. Apple engaged in deception to gain access to the Devices and install new computer software or iOS Updates.

74. Plaintiff and class members suffered actual damages as a result of Apple's actions in an amount to be determined at trial.

75. Furthermore, Plaintiff seeks punitive damages because Apple's trespass was committed from wanton or malicious motives, or reckless disregard of the rights of Plaintiff and the Class.

COUNT IV
VIOLATIONS OF CALIFORNIA'S UNFAIR COMPETITION LAW
Bus. & Prof. Code, § 17200 *et seq.*

76. Plaintiff realleges and incorporates by reference each of the above paragraphs as if fully set forth herein.

77. In accordance with the liberal application and construction of the UCL, application of the UCL to all Class members is appropriate, given that Apple's conduct as described herein originated from California, the Devices and iOS code were designed and originated in California, and Apple's uniform iOS Software License Agreement provides that California law shall apply.

78. Apple is a "person" as defined by Cal. Bus. & Prof. Code § 17201.

79. Apple violated Cal. Bus. & Prof. Code §§ 17200, *et seq.* ("UCL") by engaging in unlawful, unfair, and deceptive business acts and practices.

80. Apple has engaged in "unlawful" business practices by violating multiple laws, including Computer Fraud and Abuse Act, 18 U.S.C. § 1030, *et seq.*; California Computer Access and Fraud Act, Cal. Penal Code § 502, *et seq.*, and trespass to chattels.

81. Apple violated § 17200's prohibition against "fraudulent" conduct by touting to consumers including Plaintiff that the Updates would implement new features and fix security issues without disclosing the critically important information that the Updates would also degrade processing speed and/or battery life. Apple's representations and omissions were likely to mislead reasonable consumers and did mislead them. Plaintiff and other members of the Class relied on Apple's misrepresentations and would not have downloaded the Updates if they knew that such Updates would cause their iPhones to be damaged. As alleged above, among other economic damage, the Devices are worth less now than before Apple tricked them into installing the Updates.

82. Apple's conduct is also "unfair" pursuant to the UCL. Apple's conduct is substantially injurious to consumers like Plaintiff and other Class members, offends public policy,

1 is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct—damaging
 2 Devices that are, in many instances, an important means of communications and a critical
 3 lifeline—outweighs any alleged benefit. Specifically, the utility gained by “upgrading” the iOS
 4 software of the Devices was outweighed by the diminishment of the Device functionality. Apple
 5 engaged in this conduct at the expense of its customers’ rights when other, lawful alternatives were
 6 available (such as providing customers with full information about the Updates).

7
 8 83. Plaintiff and Class members seek all available relief pursuant to the UCL including
 9 restitution of all profits stemming from Apple’s unfair, unlawful, and fraudulent business
 10 practices; declaratory relief; reasonable attorneys’ fees and costs under California Code of Civil
 11 Procedure § 1021.5; injunctive relief; and other appropriate equitable relief.

12 **PRAYER FOR RELIEF**

13
 14 84. WHEREFORE, Plaintiff, individually and on behalf of all other Class members,
 15 respectfully request that the Court enter an Order:

- 16 a. Declaring that this action is a proper class action, designating Plaintiff as Class
 17 Representative, and appointing Plaintiff’s attorneys as Class Counsel;
- 18 b. Enjoining Apple from continuing the unlawful practices alleged herein;
- 19 c. Ordering Apple to pay actual and statutory damages (including punitive damages) and
 20 restitution to Plaintiff and the other class members, as allowable by law;
- 21 d. Ordering Apple to pay both pre- and post-judgment interest on any amounts awarded;
- 22 e. Ordering Apple to pay attorneys’ fees and costs of suit; and
- 23 f. f. Ordering such other and further relief as may be just and proper.

24 **JURY DEMAND**

25
 26 85. Plaintiff hereby demands a trial by jury on all issues so triable.

1 DATED: June 7, 2021

Respectfully submitted,
**MILBERG COLEMAN BRYSON
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s/ Alex R. Straus

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**Pro Hac Vice Forthcoming*

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